

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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UNITED STATES OF AMERICA, )  
Plaintiff, ) CASE NO. CR20-00151-RAJ  
v. ) Seattle, Washington  
EPHRAIM ROSENBERG, ) July 14, 2023  
Defendant. ) 10:00 a.m.  
 ) SENTENCING HEARING  
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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE RICHARD A. JONES  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

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1 PROCEEDINGS

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3 THE CLERK: We're here for sentencing in the matter of  
4 the United States versus Ephraim Rosenberg, Cause No. CR20-151,  
5 assigned to this court.

6 Counsel, please make your appearances for the record.

7 MS. HINMAN: Good morning, Your Honor. Miriam Hinman  
8 and Andrew Friedman for the United States.

9 THE COURT: Good morning, both of you. Please be  
10 seated.

11 MR. OFFENBECHER: Peter Offenbecher and Jacob Laufer,  
12 counsel for Ed Rosenberg, who is present in court, out of  
13 custody. Good morning, Your Honor.

14 THE COURT: Good morning.

15 THE PROBATION OFFICER: Good morning, Your Honor.  
16 Sarah Asbury-Baca on behalf of probation.

17 THE COURT: Good morning. Thank you for being here  
18 this morning.

19 We are here for the sentencing of the defendant. It's my  
20 practice to begin the sentencing proceeding by identifying all  
21 the documents that I've received and reviewed. Those documents  
22 include the following:

23 The presentence report prepared by Probation Officer Sarah  
24 Asbury-Baca, and attachments, and these include a victim impact  
25 statement, a letter, and a letter to the court from the

1 defendant; the government's sentencing memorandum; the  
2 defendant's sentencing memorandum and exhibits, letters of  
3 support for the defendant; and the plea agreement.

4 Counsel for the government, first of all, are there any  
5 other documents that I did not state, that you're aware of, that  
6 I should have reviewed in preparation for sentencing?

7 MS. HINMAN: No, Your Honor. Thank you.

8 THE COURT: And while I have you on your feet,  
9 counsel, have you reviewed the presentence report?

10 MS. HINMAN: Yes, Your Honor.

11 THE COURT: My review of that document suggests that  
12 there are no outstanding objections by the government that  
13 require resolution by the court. Is that correct?

14 MS. HINMAN: That's correct.

15 THE COURT: Counsel for the defense, are you aware of  
16 any additional documents, other than those that I've stated?

17 MR. LAUFER: No, there are no other documents, Your  
18 Honor.

19 THE COURT: And, counsel, I trust that you've reviewed  
20 the presentence report with your client?

21 MR. LAUFER: We have carefully reviewed it with  
22 Mr. Rosenberg.

23 THE COURT: And my understanding is there is only one  
24 objection, and that relates to paragraphs 24 and 31. Is there  
25 any additional argument that you'd like to make regarding that?

1 MR. LAUFER: None other, no.

2 THE COURT: Then the court will overrule the  
3 objection, and I will note that, given the context that is  
4 necessary for the court to consider and for any other reviewing  
5 entities to review, it's appropriate for those descriptive  
6 paragraphs to remain as stated.

7 Other than those objections, any other objections?

8 MR. LAUFER: There are none, Your Honor.

9 THE COURT: Thank you. You may be seated.

10 Then I'll begin with my calculations using the 2021  
11 sentencing guideline manual.

12 The defendant has pled guilty to the charge of conspiracy  
13 to commit violation of the Travel Act. We'll begin with  
14 identification of the base offense level.

15 The guidelines for 18 U.S.C., Section 1952(a)(3) is found  
16 at Guideline Section 2E1.2. That section provides for a base  
17 offense level of eight.

18 Next, the court considers specific offense characteristics.  
19 In accordance with Guideline Section 2B4.1, there should be an  
20 increase of eight levels, as the court finds that the bribery  
21 amount exceeded \$95,000 but was less than \$100,000.

22 There are no adjustments for victim-related adjustments,  
23 role in the offense, or obstruction of justice; therefore, the  
24 adjusted offense level subtotal is 16. There are no Chapter 4  
25 enhancements. I'm satisfied that, based upon the timeliness of

1 the defendant's plea, as well as the information provided in the  
2 presentence report, that he qualifies for the three levels  
3 downward consideration for acceptance of responsibility. This  
4 gives us a total offense level of 13.

5 He has a criminal history category one. The imprisonment  
6 range, under the guidelines, is 12 to 18 months; supervised  
7 release range, one to three years. He's not eligible for  
8 probation, and the fine range is \$5,500 to \$55,000.

9 The court will also affirm that the JSIN criteria was  
10 considered by the court, but it will not serve as a factor in  
11 the sentence this court will impose.

12 Next, the court looks and considers the downward variance  
13 under Guideline Section 4C1.1, and the court will exercise its  
14 discretion for a two-level reduction. This gives us a total  
15 offense level of 11 with a guideline range of 8 to 14 months.

16 Counsel for the government, how do you respond to the  
17 court's calculations?

18 MS. HINMAN: Your Honor, the court [sic] agrees with  
19 the guidelines that you just stated. I'll just note for the  
20 record, the government's understanding is that, formally  
21 speaking, the guidelines offense level for today is 13, based on  
22 the guidelines currently in effect, but that Your Honor can vary  
23 downward to achieve the equivalent of a guideline offense level  
24 of 11, if you so choose. It just wouldn't change the actual  
25 guidelines of 12 to 18 months.

1                   THE COURT: The court is exercising its discretion to  
2 do so.

3                   MS. HINMAN: Thank you, Your Honor.

4                   THE COURT: Counsel for the defense?

5                   MR. LAUFER: No objection, Your Honor.

6                   THE COURT: We will proceed in the following order:  
7 I'll hear first from counsel for the government; then I'll hear  
8 from probation, I'll hear from defense counsel, and then I'll  
9 hear from the defendant. He'll be the last person to address  
10 the court before I impose sentence.

11                  Counsel for the government, your recommendation?

12                  MS. HINMAN: Your Honor, the government, along with  
13 defense and probation, is recommending a sentence of two years  
14 of probation, including 12 months of home detention electronic  
15 monitoring, and a fine of \$100,000, as well as the other  
16 conditions recommended by probation.

17                  The government reaches this recommendation after balancing  
18 the seriousness of Rosenberg's participation in the bribery  
19 conspiracy with a number of mitigating factors, including his  
20 history of legitimate work, his public apology, and a lack of  
21 evidence that Rosenberg participated in negative attacks on  
22 competing sellers who were competing with his clients.

23                  I think it's appropriate to begin by addressing the  
24 seriousness of the offense, because it certainly was a serious  
25 offense.

1 Rosenberg used bribery and fraud to obtain improper  
2 advantages for his clients on the Amazon Marketplace. He  
3 primarily bribed Amazon insiders to obtain Amazon's internal  
4 information. Suspended sellers, who had learned exactly what  
5 Amazon had figured out about their infractions, could use that  
6 information to game the system to appeal their suspensions.

7 Mr. Rosenberg also paid bribes to Amazon insiders for  
8 specific desired actions on sellers' accounts, such as  
9 reinstating suspended sellers. But he engaged in that kind of  
10 activity much less frequently than the bribes for obtaining  
11 information.

12 Mr. Rosenberg also participated in the part of the  
13 conspiracy that involved submitting forged supplier invoices,  
14 which circumvented Amazon's controls to try to ensure that  
15 products were authentic and safe.

16 Mr. Rosenberg is being held responsible for bribe payments  
17 of more than \$100,000. As with the other defendants we had  
18 discussed in this case, the loss is being estimated at the  
19 amount of bribes paid because it's not practical to determine  
20 the amount of the benefit of the bribes or the loss to consumers  
21 or competitors or Amazon, even though those were presumably  
22 larger.

23 Now, that's all to say that this was a serious offense.  
24 There are also some important distinguishing factors that make  
25 Rosenberg's activity less serious than some of the other

1 defendants.

2       In particular, there is no evidence, that the government  
3 has, that Mr. Rosenberg engaged in the negative attacks on  
4 competing sellers. So we have no evidence of him being involved  
5 in submitting false complaints to Amazon, obtaining false  
6 negative reviews against competing sellers, or defacing product  
7 listings of competing sellers, and those are all activities that  
8 some other defendants in this conspiracy did engage in.

9       Another thing that distinguishes Mr. Rosenberg, in terms of  
10 his offense conduct, from the others is that he does not have a  
11 separate tax offense, which some of the others do. So that's  
12 all to say serious, but, in some ways, less serious than some of  
13 the others.

14       I want to turn now to Mr. Rosenberg's history and  
15 characteristics.

16       He has no criminal history, and he has done a lot of  
17 legitimate work, including having a very high-volume, primarily  
18 legitimate consulting business serving sellers on the Amazon  
19 Marketplace.

20       Now, on the one hand, that means he is a wealthy individual  
21 who didn't have an excuse to do this, but, on the other hand, he  
22 is someone who knows how to be successful using legal means. He  
23 has done that, and he can return to that.

24       He has also used the fact that he had an extensive network  
25 of Amazon sellers and consultants to disseminate his public

1 apology to all of those people, and in that public apology, he  
2 didn't just take responsibility for what he did, but he made an  
3 effort to discourage those other people seeing that message from  
4 engaging in this type of illegal activity.

5 Mr. Rosenberg's history, including his legitimate work and  
6 his dissemination of his public apology, are important factors  
7 that tie into how the government thinks about deterrents and the  
8 need to protect the public, so I'm just going to turn to that  
9 factor next.

10 Deterrents and protection of the public are important  
11 features in this case -- that we've talked about for all of the  
12 defendants -- because this kind of conduct caused harm. It  
13 caused harm to customers who were hurt by believing that sellers  
14 and products were properly approved, and, instead, may have been  
15 exposed to products that could have been substandard because the  
16 normal controls on products and sellers were circumvented.

17 This kind of activity caused harm to competitors of  
18 Rosenberg's clients and the other co-defendants' clients because  
19 they were hurt by having to compete with businesses that  
20 achieved unfair advantages through bribery and fraud. And,  
21 finally, it hurt Amazon, primarily in terms of Amazon's  
22 reputation and customer trust in Amazon.

23 So we talk about other kinds of features for all these  
24 defendants. Those things make considerations of deterrents and  
25 protection of the public important things to think about for

1 each of these defendants.

2       When the government thinks about the need to achieve those  
3 goals, in Mr. Rosenberg's case, there are several reasons that  
4 the government thinks a less significant sentence than what some  
5 of the other defendants received may be sufficient to achieve  
6 those goals for Mr. Rosenberg.

7       So I'm going to start with specific deterrents. The  
8 government sees the need for specific deterrents as being  
9 somewhat reduced in this case because of Mr. Rosenberg's  
10 apology, accepting responsibility, that public apology, and his  
11 history of legitimate business activities. In the government's  
12 view, these things make it less likely that Mr. Rosenberg is  
13 going to go back to this kind of illegal activity.

14           THE COURT: Well, counsel, let me stop you there  
15 before you go any further, because I'd like to address the  
16 correspondence that the court received in the form of Document  
17 192, Amazon's victim statement regarding Mr. Rosenberg. And in  
18 that document, counsel, they point out that, essentially, he  
19 ceased his protestation of innocence only after he was able to  
20 secure a plea deal before this court. And, also, they do some  
21 condemning of him for the fact that he uses a public platform  
22 and prominence in the seller community to falsely deny his  
23 involvement. And I recognize that, at some point in time, he  
24 transitioned to do a video, which is a positive statement, or  
25 can be seen that way.

1           But how do you balance or rectify between what Amazon's  
2 perception of what he did to, essentially, get what he wanted,  
3 and then transition into a more positive role for the community?

4           MS. HINMAN: Well, I think the important thing is to  
5 think about what kind of acceptance of responsibility we see  
6 from Mr. Rosenberg today, because that's what really affects  
7 what, you know, is going to happen for him going forward. And,  
8 you know, like many defendants, he spent some time denying, you  
9 know, that he had engaged in this activity. But as he, you  
10 know, stands before the court today, I, you know, expect he's  
11 going to be taking full responsibility.

12           And he did, in fact, circulate the public apology,  
13 actually, before the plea was entered in court, although it was  
14 shortly before. So while the government, you know, certainly  
15 takes the court's point that Mr. Rosenberg spent some time  
16 denying, I think that the key, in terms of thinking about what  
17 kind of deterrents is necessary, is where Mr. Rosenberg has  
18 gotten himself today. And I think, at this point, he has  
19 accepted responsibility, he's done that very publicly, and he's  
20 tried to deter others.

21           THE COURT: Okay. Thank you. Please continue.

22           MS. HINMAN: The second point that I wanted to address  
23 is about general deterrents.

24           You know, we often think about the sentence in terms of  
25 what is needed to be achieved in terms of deterring people in

1 general, not just the defendant sitting before us. And one  
2 reason that we might not need as great a sentence to achieve  
3 that general deterrence goal for Mr. Rosenberg today, is that he  
4 has already made an effort, himself, to try and contribute to  
5 that effort to achieve general deterrences. Specifically, he  
6 did circulate that public apology, which is reaching an audience  
7 that I understand to be tens of thousands of people in the  
8 Amazon seller and consultant community, and, you know, exhorted  
9 them to refrain from these kinds of illegal activities on the  
10 Amazon Marketplace.

11 So when the government considers all these factors,  
12 particularly the seriousness of the offense, but then taking  
13 into account the lack of those negative attacks, the public  
14 apology in particular, the government believes that a sentence  
15 of two years of probation with 12 months of home detention and a  
16 \$100,000 fine is sufficient but not greater than necessary to  
17 achieve the goals of sentencing.

18 And I would note that that recommendation for a  
19 noncustodial sentence also does align with the proposed  
20 guideline amendments, which are expected to take effect in  
21 November of 2023.

22 So that is all from the government, unless you have further  
23 questions.

24 THE COURT: I have one more question, counsel.

25 You indicated, at the beginning of your presentation to the

1 court, that Mr. Rosenberg would have the opportunity to return  
2 to the means in which he makes his livelihood.

3 Are there any restrictions on his ability to participate in  
4 his trade because he now will have a felony conviction?

5 MS. HINMAN: I am not aware of any restrictions that  
6 would affect his ability to serve as a consultant, legally.  
7 Obviously, I'm not familiar with the state in which he lives and  
8 works, but I'm not aware of any specific legal restrictions as a  
9 result of the felony conviction that would interfere with his  
10 ability to make a legitimate livelihood in consulting work.

11 THE COURT: Thank you, counsel. I have no additional  
12 questions.

13 MS. HINMAN: Thank you, Your Honor.

14 THE COURT: I'll hear from probation.

15 THE PROBATION OFFICER: Thank you, Your Honor.

16 I have nothing to add, except to clarify, for the record,  
17 that we are recommending the special conditions contained in our  
18 revised sentencing recommendation, which was submitted earlier  
19 this week, and those are recommended by probation in the Eastern  
20 District of New York, where Mr. Rosenberg will be supervised.

21 But if you have any questions --

22 THE COURT: I have no additional questions. Thank  
23 you.

24 Counsel?

25 MR. LAUFER: Good morning, Your Honor, and may it

1 please the court.

2 Mr. Rosenberg is, in a salient aspect, an unusual criminal  
3 defendant.

4 In my own experience and, perhaps, in the experience of the  
5 court, criminal defendants, in general, are takers. They take  
6 what's theirs, they encroach on others, and continue to take  
7 from others until they cross a line and become criminal  
8 defendants. There are takers and there are givers.

9 Ed Rosenberg is, I think from the submissions that have  
10 been presented to Your Honor, is, in every respect, a giver.  
11 He's a giver of his time, of compassion, of favors of loans, of  
12 kindnesses, and boundless help to many, many people, even  
13 strangers, often without compensation, Your Honor.

14 He appears before Your Honor blemished by the crime that he  
15 committed, but he also appears as a whole human being, who, in  
16 midlife, has accomplished more goodness and kindnesses than  
17 many, many people can accomplish in their entire lives.

18 It's incongruent, Your Honor. It's almost ironic that  
19 Mr. Rosenberg is here before the court for sentencing for a  
20 crime involving Amazon, a topic that he had made -- he had made  
21 a mission in life to try to improve that environment and try to  
22 help people who were participants, Your Honor, in that  
23 environment.

24 As the letters that are submitted to the court, Your Honor  
25 will have seen that he has devoted the core of his working life,

1 with dedicated efforts, to help people with problems, to help  
2 people -- enable them to earn a livelihood. He has been  
3 involved late at night, some of the letters will have shown, and  
4 even in the early hours of the morning, trying to help people.

5 In his zeal -- in his zeal, he lost north on his moral  
6 compass, and that's why he is here. That has brought him before  
7 Your Honor.

8 Now, at this point in his life -- at this point, it's  
9 probably fair to say, the lowest point of his life -- he has  
10 publicly, he has abjectly apologized, including to Amazon  
11 itself, including to the people that he has disappointed, and he  
12 has exhorted -- he has exhorted all of his followers, and anyone  
13 who will listen to him, to follow Amazon's rules, its  
14 regulations in every single aspect.

15 Amazon has written to the court -- I mean has given its  
16 victim impact statement. It's the victim of Ed's crime. And  
17 that letter expresses hurt and anger, and we get it. Ed gets  
18 it.

19 Many of the details, I must say, of Amazon's letter are  
20 written without granular knowledge, or even serious knowledge, I  
21 believe, of the details of the investigation that are known to  
22 the government that have been shared with defense in discovery.  
23 I heard someone say something about a million documents or  
24 sheets of paper that were exchanged that Amazon would not have.  
25 I think a million is probably an exaggeration, but it does

1 convey to the court the mammoth amount of discovery and  
2 information, and information that informs the recommendation  
3 that the government has made. And in my own experience, the  
4 government would not have made such a recommendation lightly.

5 There is a mountain of discovery that Amazon doesn't know  
6 about. And Amazon has written, for example -- just as an  
7 example -- that Mr. Rosenberg facilitated the dissemination or  
8 the distribution of unsafe products. And, frankly, the  
9 government's memorandum itself said that there is no evidence to  
10 that effect.

11 So Amazon, to a degree, is, from the outside, looking in  
12 with the hurt of a victim, which I acknowledge and Ed  
13 acknowledges and it's fact. It's fact.

14 There's another point here, and I will tell the court it's  
15 a matter of -- it's a matter of sensitivity.

16 We have reviewed this together -- Mr. Offenbecher and Ed  
17 and me -- there's no intent to blame the victim. That is  
18 absolutely the last thing that we wanted to do, that anyone in  
19 his right mind would do, candidly. Okay? There was no  
20 intention here to blame the victim, though Amazon, in its  
21 sensitivity, took it that way.

22 But there was no way, I must say to Your Honor, there was  
23 no way to explain the context, not to justify it, but to explain  
24 the context of what happened here in Ed's crimes without laying  
25 out the circumstances, the atmosphere of what existed there at

1 the time.

2 And I will say to Your Honor, the issue, the problem -- and  
3 I'm not blaming Amazon -- but the problem that did exist -- that  
4 did exist in terms of sellers' inability to get a direct  
5 response -- Your Honor has seen these letters, I'm not going to  
6 belabor that -- that is a problem. That is a problem -- I must  
7 say, Your Honor, that is a problem that the attorney general of  
8 California noted in the lawsuit that the attorney general of  
9 California filed against Amazon last year. And I'm just quoting  
10 from that letter -- from that -- a paragraph in the attorney  
11 general's -- again, I'm not blaming Amazon. I'm simply pointing  
12 out, I guess, an imperfection that was the context of Ed's  
13 criminal conduct that has brought Ed here.

14 I'm quoting from the attorney general's lawsuit.

15 "Amazon admits, in internal documents, that sellers live in  
16 constant fear that their accounts will be suspended or that  
17 top-selling products will be removed, putting their businesses  
18 and livelihoods at risk."

19 Again, this is not an intention to blame Amazon. Amazon is  
20 not to blame. Ed is to blame that he is here, we acknowledge  
21 that, and -- and it's just a fact.

22 Ed comes from a modest background. He lives modestly.  
23 He's been successful. He has been successful. He has been  
24 successful, but he lives modestly. He dresses modestly, without  
25 airs, without ego, without fancy clothing or airs. He rides on

1 a bicycle and a scooter.

2 He's succeeded, Your Honor, because of his diligence, and  
3 he has succeeded because of kindnesses he's rendered to others.

4 There are many letters that have been submitted to the  
5 court, some of them just express gratitude, simple gratitude for  
6 what Ed has done for them. The terms "kind" and "compassionate"  
7 and the synonyms for those words occur repeatedly, Your Honor,  
8 throughout those letters.

9 And there are letters, of course, from his family. He's  
10 been a considerate, caring father, husband, sibling, grandchild,  
11 child, of course. There are letters from colleagues, of course.  
12 So I'm not commending that as extraordinary, but this is the  
13 commonplace of somebody who is a decent person, a good person,  
14 who really cares, who's not -- who's not bad as a human being.

15 His clergy has written that he's kind, compassionate,  
16 generous.

17 Many of the letters come from complete strangers, people  
18 who he barely knows, people who he, actually, may not have  
19 personally, physically met, other than in Zoom and in  
20 communications.

21 Your Honor, I'm sure -- I'm sure many people -- many  
22 criminal defendants have come before Your Honor with statements  
23 about charity that they have given or good deeds that they have  
24 done or began to do or began to do after the criminal problem  
25 came to them, they were confronted with a criminal problem. And

1 his good deeds are lifelong. Meaning, in the letters, we have  
2 traced -- we have traced who Ed is and how he has comported  
3 himself and dealt with others throughout the entirety of his  
4 life.

5 I mean, there's one letter -- there is a -- there is a  
6 holiday in the Jewish religion that's a particularly festive  
7 holiday, where people dress up and drink are and are merry and  
8 are happy and the like. And one of the letter writers has  
9 written to the court that on that day, he and Ed would not do  
10 that, but they would go to hospitals and visit people who were  
11 hospitalized and may be lonely or forlorn or needing some  
12 compassion.

13 There's another letter in terms of impact that Ed may have  
14 had. It writes, for example, if the court wants to know who is  
15 this man who has committed a crime and appears now before Your  
16 Honor for sentencing, there is one of the letters that Ed, when  
17 he was a student abroad, there was another student who was  
18 lonely, depressed, lost, and Ed went out of his way to take him  
19 under his wing. And that letter reports that that person has  
20 succeeded in life, become an author, a guider of youth and the  
21 like. I won't say Ed gets credit for that, but sometimes  
22 kindness in someone's life can be an inflection point, and Ed  
23 can't get credit for that, but it shows who Ed is.

24 He's been kind to his employees. Mrs. Halberstam has  
25 written in great detail. Ms. Navarro has written how, when her

1       husband was hospitalized for, I think she said a month, she  
2       expected to be docked pay, but, no, that's not who Ed is.

3           And Ed went out of his way as well -- went out of his way  
4       as well to help her secure the logistics with the transportation  
5       of some medicine for her husband.

6           Warehouse workers -- right? -- adjoining employees, meaning  
7       not even Ed's employees, have written of his kindness.

8           This empathy is well known, and, again, it's repeated  
9       throughout the letters.

10          There's one point that struck me, Your Honor, as I was  
11       preparing to address the court.

12          In looking at those letters -- I mean, it's not immediately  
13       obvious, but in the looking at those letters, they come from,  
14       literally, all over the place. They're from multiple, maybe a  
15       dozen states in the United States, from Europe as well, and  
16       other countries as well. And what struck me -- it's sort of a  
17       fanciful thing -- I thought, look, there's a letter from New  
18       York, Maine, New Jersey, Delaware, Maryland, Georgia, Florida,  
19       Texas, Nevada, California, Oregon, and over into Illinois.  
20       There were letters from foreign countries from people, from  
21       Spain and from England, that Ed has helped, some for  
22       compensation, many without compensation at all.

23          Out of the desire -- and where it all comes from, I think,  
24       in my lay analysis, which may not be worthwhile, where it comes  
25       from was the experience that he personally had felt when he was

1 knocked out of the box with his audio business many years  
2 before, and the despair, and the despair that one feels when one  
3 is unable to earn a livelihood, one doesn't know why, one  
4 doesn't know how to fix it, one doesn't know how to regain the  
5 ability to support one's family.

6 There are letters from lawyers. There are letters  
7 expressing their gratitude for the scores of many clients of  
8 theirs whom Ed has helped.

9 In a couple of instances -- I just want to highlight maybe  
10 two or three of the letters -- the impact of what he did and  
11 the -- of the kindness -- and, you know, there's the obvious,  
12 you know, so-and-so was unable to earn a livelihood. But there  
13 is one letter that really -- a couple, actually, one or two,  
14 that really moved me.

15 There's a letter from a Mrs. Vinnik -- right? -- who  
16 recounts that her children are skilled at ballroom dancing --  
17 right? -- I mean, I don't know -- skilled at ballroom dancing,  
18 and she writes how -- Ed's enabling of her to earn a livelihood,  
19 she writes -- right? -- "On March 19th, 2023, he became the  
20 fifth-time U.S. champion in ballroom dancing. I clearly  
21 understand that if not for Mr. Rosenberg's support of my case,  
22 it would never have happened." Right? It's a mixture of pride  
23 and gratitude and all of these things kind of, like, all pulled  
24 together, but it just brings to the fore the significance of the  
25 kindnesses that Ed has done.

1        Your Honor has before him a good a man, a good person. It  
2 is, I guess, the nub of what I'm trying to convey.

3        Mr. and Mrs. Clifford from England -- right? -- who were  
4 selling party goods, they were able to hire single women  
5 bringing up children on their own. Ana Ochoa has written the  
6 same thing; that with his help -- one letter -- one last  
7 point -- and it kind of moved me.

8        A Ms. Roberts had written, sort of, I thought maybe even a  
9 pedestrian letter, kind of like thanking Ed and expressing  
10 gratitude, but she took the trouble of securing a couple of  
11 posts online from others, and one of those posts is from a lady  
12 who had, actually, now had to rely on food stamps, who writes,  
13 quote, I'm literally in tears right now as I'm reporting that  
14 I'm back being able to earn a livelihood and selling.

15        Ed is remorseful. His apology is sincere.

16        And now I'm going to touch on something that Your Honor  
17 asked the government about that Amazon -- I guess Amazon didn't  
18 know or was sensitive to.

19        In terms of Ed's contrition, from the outset -- from the  
20 outset -- Ed was cooperative. This indictment was brought in  
21 September of '20, I believe it was, and we had discussions with  
22 the government in what way might Ed be able to be helpful or  
23 what was the government looking for. And I and someone in my  
24 office and Peter, we spent an extraordinary amount of effort  
25 culling together emails and communications and everything. And,

1 ultimately, in December of 2020, there was a lengthy proffer  
2 session in which Ed acknowledged his wrongdoing.

3 Amazon doesn't know what's behind the scenes, right?  
4 Amazon is looking at what it's looking at, drawing a reasonable  
5 inference -- drawing a reasonable inference, but that inference  
6 is wrong.

7 Ed has, behind the scenes, acknowledged his wrongdoing,  
8 offered to cooperate, and cooperated in a very lengthy session  
9 with a lot of documents -- I don't remember how many -- broken  
10 into categories that we had assembled and presented to the  
11 government. That's the real Ed.

12 Was he writing certain things online, trying to defend  
13 himself? Your Honor, first, it's a natural instinct, but  
14 second, really, more -- it's a natural instinct. Okay.  
15 Amazon's reaction to the attorney general of California, this  
16 lawsuit that I was referring to, was the attorney general got it  
17 backwards. That's like a quote. Right? So apart from this  
18 kind of, like, sort of instinctive, almost, Ed was being  
19 plastered on the Internet, because he was joined in this  
20 indictment with other people who were doing, I would say,  
21 horrible things, horrible things. And he felt the need to  
22 defend himself.

23 Would it have been better had he been silent? Sure. Would  
24 it have been better if he used different verbiage? Yes, that  
25 would have been better. He was trying to defend himself and

1 stay alive while he was being skewered for all of these things  
2 people were doing, meaning attacking competitors or tainting  
3 their websites and doing all those things that other people --  
4 that other people had done.

5 His rehabilitation, he's sincere. We have been working  
6 with The Aleph Institute -- Your Honor would have seen the  
7 letter -- and there are many, many steps beyond -- way beyond,  
8 you know, what's contemplated in the recommendation that's been  
9 put to the court.

10 He has offered to mentor new participants in the Amazon or  
11 Internet sales space without compensation. He, actually,  
12 undertook a course, I think, by Northeastern University that  
13 deals with ethics. Right? He lost his compass. Right? That's  
14 why he's here before Your Honor. But he's, actually, taking  
15 this course, I think it's Northeastern University. There is a  
16 clergyman who is committed to just kind of -- you know, just  
17 drill it home, drilling it into him. I don't think it's even --  
18 well, whether it's necessary or not, it's certainly worthwhile.

19 He has done -- he's offered to sponsor, at his events,  
20 needy or struggling -- struggling Internet participants, Amazon  
21 participants.

22 The Supreme Court has said, I think it's in the *Gall* case,  
23 that probation is not -- is punishment. It really is  
24 significant punishment by itself, and probation, coupled with  
25 home detention, is certainly punishment as well.

1       I urge -- you know, just coming back to the Supreme Court,  
2 you know, the Supreme Court has emphasized, in the *Pepper* case,  
3 the punishment imposed, quote, should fit the offender and not  
4 merely the crime.

5       Respectfully, Your Honor, given the mitigating factors that  
6 exist here, I respectfully urge the court to impose a sentence  
7 in accordance with the recommendation that the parties, the  
8 government and the defense, has submitted to the court, and that  
9 the probation department concurs in as well. I respectfully  
10 urge Your Honor that that would be a fair exercise of the  
11 court's very considerable discretion.

12           THE COURT: Thank you, counsel.

13           MR. LAUFER: Yes, sir.

14           THE COURT: Mr. Rosenberg, your lawyer has spoken for  
15 you. He's provided written materials on your behalf and a large  
16 volume of letters this court has read. Sir, you're not required  
17 to say anything. If you choose to remain silent, that will not  
18 be held against you. But if there are any words you'd like to  
19 share with the court, please step to the lectern and share from  
20 that location.

21           THE DEFENDANT: Honorable Judge Jones, I want to  
22 apologize to this court, to Amazon, the Amazon community, and my  
23 family. I know I apologized before, but I wanted to say again  
24 how sorry I am and how ashamed I am.

25           I know I hurt Amazon. I was taking Amazon's information,

1 its privacy, and its ability to make its own independent  
2 decisions. That was wrong. That's against my religion and  
3 against my values. That's not how I want to live my life.

4 I have done a lot of soul searching over these last few  
5 years. I know that I alone put myself in this situation. I  
6 just really regret my actions. I can never and will never do  
7 this again, and I expect to spend the rest of my life trying to  
8 make up for my wrongs.

9 Whatever Your Honor decides, I will respect and I will  
10 accept, as a result of my actions, and I will accept it as the  
11 will of God.

12 Again, I am sorry, and thank you for listening to me.

13 THE COURT: Thank you, sir. You may be seated.

14 Mr. Rosenberg, this court is mandated to calculate the  
15 appropriate guideline, and I've done that. The court is also  
16 charged with the responsibility of looking at and considering  
17 all of the Section 3553(a) factors of the sentencing guidelines.  
18 It's my practice to go through each of those factors so that you  
19 have a clear understanding of what things the court considered  
20 and how I arrived at the sentence that I will impose.

21 I begin first, sir, with your history and characteristics.  
22 The court would note that, other than the one blemish on your  
23 pretrial service, where you had direct contact with a potential  
24 witness, you performed satisfactorily on your supervised  
25 release. The court also notes that you have no criminal

1 history, you had low adverse child experiences, and that you  
2 were raised in a middle-class family, you're well educated, and,  
3 otherwise, a law-abiding citizen. That's the person that comes  
4 before this court.

5 When the court looks at the nature and the circumstances of  
6 the offense, the court finds aggravating circumstances.  
7 Aggravating for the fact that you and others paid commercial  
8 bribes to Amazon employees and contractors in exchange for  
9 information that was inappropriately received and criminally  
10 received.

11 The court also notes that there was competitive information  
12 that you received, and the court also notes that there were  
13 other aggravating activities that you engaged in, but I  
14 segregate those from the aggravating activities of the other  
15 defendants in this case. I only hold you responsible for the  
16 specific things that you did, and not necessarily for the  
17 conduct of other individuals.

18 Next, the court looks at the need for the sentence to  
19 reflect the seriousness of the offense. Now, some may view  
20 Amazon -- I think most people on the planet view Amazon -- as  
21 one of the largest corporations in existence. That does not  
22 mean that the fact that you had ill-gotten gains or benefits or  
23 that your clients received those is any less of a crime. The  
24 court treats this as a very serious offense. I look at it as a  
25 serious offense by the fact that, one, you'll have the

1 opportunity to turn back to your livelihood and continue to  
2 engage in that same livelihood and same exact practice that you  
3 had before, other than the blemishes that you've created on your  
4 record because of what you did here.

5 The reason I asked the government the question if there  
6 were any adverse consequences to your ability to make a living  
7 was to make a very specific point. You participated in a  
8 process that you caused bribery of other individuals, and people  
9 were fired as a result of that. Those individuals don't get to  
10 go back to their jobs. Those individuals don't get to go back  
11 to their livelihood and take care of their families. They have  
12 to come up with other means. So when I look at this as a  
13 serious offense, that's one of the factors the court considers  
14 to justify that determination.

15 The court also needs to impose a sentencing to promote  
16 respect for the law and to provide just punishment. The court  
17 notes that you were involved in this process for a period of  
18 three years. It wasn't a process that you did things and you  
19 continued to do things, and you stopped because your moral  
20 compass or your moral barometer said stop. You stopped because  
21 you got caught by law enforcement. That's a different statement  
22 to this court as opposed to you willingly volunteering what you  
23 had done.

24 The court also notes that, while you did acknowledge in the  
25 video and other statements that you had done wrong to try and

1 communicate, effectively, as the government represents, to  
2 10,000 people, that may be fine, but, nonetheless, the court has  
3 to impose a sentence so that you have greater respect for the  
4 law. I trust that you do now, but you certainly didn't before.

5 The court also has to impose a sentence to provide adequate  
6 deterrents to make sure that you do not engage in this type of  
7 conduct again, and also to send a message to other individuals  
8 in your trade and practice that, even if it's Amazon or other  
9 large corporation, there can and will be consequences for this  
10 type of illegal conduct.

11 The court does not factor in the need to protect the public  
12 from further crimes, because I think the fact that you have this  
13 felony conviction on your record, this blemish on your record,  
14 and the fact that you've lived an otherwise law-abiding life,  
15 that the likelihood that you'll participate in this kind of  
16 criminal activity is minimal.

17 The court sees no reason to factor in the need for  
18 education, training, or treatment. You're well educated, you  
19 have the opportunity to return back to your place of employment,  
20 and that's not a major factor for this court.

21 The court looks at the avoidance of sentencing disparity,  
22 and I find that the two other defendants that were sentenced,  
23 one for 10 months and one for 17 months, but there are grave  
24 distinctions between what you and what these other individuals  
25 did. Specifically, you didn't involve yourself in some of the

1 malicious conduct, nor were you involved in the tax issues that  
2 the other defendants were involved in, and so these are  
3 mitigating factors, but it certainly demonstrates to the court  
4 that there is no need to be of concern of sentencing disparity  
5 in the sentence that I will impose in this case.

6 The court finds that, given the offense of conviction, your  
7 background, and all the other factors I just alluded to, that  
8 you will be placed on probation, as recommended by the  
9 government. You'll be subject to the standard and special  
10 conditions exactly as stated in the recommendation, and that  
11 will be consistent with the Eastern District of New York's  
12 recommendations and requirements.

13 The court also finds that the fine of \$100,000, as agreed  
14 to by all parties, will be imposed by this court, as well as the  
15 \$100 special assessment fine, which is due immediately.

16 It's my understanding that there's no outstanding  
17 restitution. Is that correct, counsel?

18 MS. HINMAN: Yes, Your Honor.

19 THE COURT: No restitution will be sought or imposed  
20 by this court.

21 Sir, having imposed all the other conditions of sentencing,  
22 the only remaining issue is whether or not this court should  
23 impose any custodial time.

24 Mr. Rosenberg, I think you need to hear a few words from  
25 the court.

1       Your lawyer went on extolling the virtues of you as an  
2 outstanding citizen in our community, and based upon the letters  
3 I've reviewed and read, I have no reason to disagree or  
4 challenge the communications. No one says that you're not a  
5 kind or not a good person, nor has anyone claimed that you  
6 haven't done good deeds for the majority of your life. But I  
7 think you have to recognize that even good people, even normal  
8 people can do evil things and do evil deeds.

9       Now, sir, one of the concerns that the court has is that  
10 you took it upon yourself to be a self-appointed Robin Hood, to  
11 take from Amazon and try and identify or commit to the  
12 individuals you thought should receive the benefit of your  
13 wisdom, knowledge, and experience.

14       Your lawyer pointed out the fact that of the attorney  
15 general's office going after Amazon. You certainly weren't  
16 appointed as the attorney general or in that capacity to go  
17 after Amazon in that fashion, even if it helped people who were  
18 having challenges or difficulties in their life.

19       If the court accepted that an excuse or justification,  
20 think of the ramifications that that would have for the balance  
21 of our society if everyone in your business can do the exact  
22 same thing, to the destruction of business large or small.  
23 That's not acceptable, that's not appropriate, and that can't be  
24 tolerated.

25       Now, sir, the court believes that the appropriate sentence

1 in this case will be to follow recommendation of all parties.

2 The court doesn't see the justification or need to impose any  
3 period of incarceration.

4 The court also notes that this two years of probation will  
5 include 12 months of home detention, and you'll be subject to  
6 the standard and special conditions exactly as stated by the  
7 probation office.

8 The court will not read the special conditions into the  
9 record. They will be included, and I think that you have the  
10 knowledge of the special conditions. Is there any need for the  
11 court to go over that, counsel?

12 MR. LAUFER: No, sir.

13 THE COURT: In this regard, I believe the overall  
14 sentence is reasonable, sufficient, but no more than necessary  
15 to carry out the objectives of sentencing.

16 Counsel for the government, before you present the judgment  
17 to the defense, I'll ask you to remain at your table, because I  
18 wish to give the defendant his rights of appeal.

19 Mr. Rosenberg, as to your rights on appeal, it's my  
20 understanding that, under paragraph 17 of the plea agreement,  
21 you've waived your rights on appeal. Any rights you had on  
22 appeal are exactly as stated in that document.

23 In addition to those rights, you also have the right to  
24 challenge your lawyer's effectiveness, if you believe that's  
25 appropriate.

1       If you wish to appeal the sentence, it's very important  
2 that you tell your lawyer that that's exactly what you wish to  
3 do. He can explain to you any issues that are appealable and  
4 any issues that might survive.

5       Now, if you wish to appeal the sentence and cannot afford  
6 the filing fee for the Court of Appeals, you can ask me to waive  
7 that fee, and I will direct the court clerk to prepare and file  
8 a notice of appeal at your request at no cost to you. Please be  
9 mindful that any notice of appeal must be filed within 14 days  
10 of the entry of judgment.

11       Mr. Rosenberg, do you understand your rights on appeal?

12           THE DEFENDANT: Yes, Your Honor.

13           THE COURT: Counsel for the government, you may  
14 present the judgment.

15           MS. HINMAN: May I just make one motion so I can  
16 include it at the judgment? That is, at this time, the  
17 government moves to dismiss the remaining counts in the  
18 indictment --

19           MR. LAUFER: I'm sorry. I'm not hearing, Your Honor.

20           THE COURT: Do you wish to repeat it, counsel?

21           MR. LAUFER: I'm sorry. I was not hearing what  
22 counsel --

23           THE COURT: Do you wish her to repeat it?

24           MR. LAUFER: No. Mr. Offenbecher told me what she was  
25 saying.

1                   THE COURT: Please continue.

2                   MS. HINMAN: Okay.

3                   So, yeah, I was just requesting -- motioning at this time  
4 to dismiss Counts 2 through 9.

5                   THE COURT: Any objection?

6                   MR. LAUFER: No objection, Your Honor.

7                   THE COURT: That motion is granted. Those counts will  
8 be dismissed.

9                   MS. HINMAN: Thank you, Your Honor. May I have a  
10 moment to finish the judgment?

11                  THE COURT: You may.

12                  MR. OFFENBECHER: Your Honor, Mr. Laufer and I have  
13 reviewed the judgment, and I believe it accurately portrays the  
14 court's judgement.

15                  THE COURT: Thank you.

16                  Counsel, you may present the judgment to probation.

17                  MS. HINMAN: Thank you, Your Honor.

18                  May I approach?

19                  THE COURT: You may.

20                  Counsel, on the page 4, there's a strikeout for the  
21 restitution requirement. I'm replacing my initials there,  
22 striking that from the court's determination.

23                  I've reviewed the judgment. It does reflect my oral  
24 ruling, and I've signed it.

25                  Good luck, sir.

1 This concludes this proceeding. We'll be in recess.

2 (Proceedings concluded at 11:03 a.m.)

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C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 19th day of July 2023.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR  
Official Court Reporter